

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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MIKE D. MONCAYO,

Plaintiff,

- against -

UNITED PARCEL SERVICE, INC.,
UNITED PARCEL SERVICE GENERAL
SERVICES CO., AND LONNIE MISHOE
III,

Defendants.

**STATEMENT OF EVIDENCE AND
ORDER**

19 Civ. 5415 (NRB)

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NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Plaintiff-Appellant submitted a Statement of Evidence pursuant to Rule 10 of the Federal Rules of Appellate Procedure concerning an unrecorded side bar which preceded summations. Defendant-Appellant submitted objections to plaintiff's statement. Plaintiff also included the page of the transcript (p.82) which reflects the timing and fact of the sidebar. This Court has considered those submissions and its own recollection independent of and as refreshed by the parties' statements.

As the transcript reflects, the context of the sidebar was the following. After a break following the conclusion of testimony on the morning of the second day of trial, the jury returned to the courtroom. At that time, I informed the jury that summations would commence and that plaintiff's counsel would go first to be

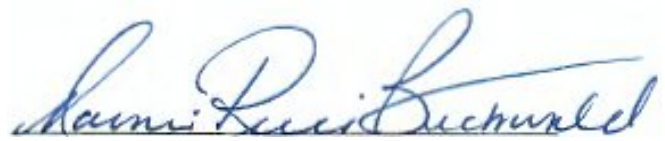
followed by defendant. I added "That's it." by which I intended to convey that there would be no rebuttal summation. Before my statements as to the order of summations the subject had not been raised by either counsel. As the transcript reflects, Mr. Steinberg, plaintiff's counsel asked to approach. The subject of the Rule 10 application concerns what happened next.

The following statement is the Court's best recollection: Mr. Steinberg requested that he be permitted to sum up last and stated that is the common practice in civil cases. I responded that under this Court's Local Rules the order of summations was determined by the trial judge and that the order I had articulated would stand. I do not recall plaintiff's counsel having asked for leave to give a rebuttal summation, but if he had, I would have denied the request. I do not recall plaintiff's counsel noting any objection to any ruling at the sidebar.

IT IS HEREBY ORDERED that the Clerk of the Court is directed to include the statement in the preceding paragraph as settled and approved and it is to be included in the record on appeal of Plaintiff-Appellant.

SO ORDERED.

Dated: New York, New York
June 14, 2023


NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE